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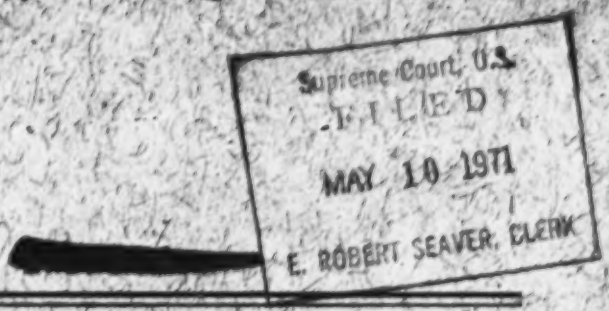

In the Supreme Court of the United States

OCTOBER TERM, 1970

IRVING J. ENGELMAN, ET AL., APPELLANTS

v.

CAROLYN AMOS, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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In the Supreme Court of the United States

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

This brief is submitted pursuant to the Court's invitation of February 22, 1971.

OPINIONS BELOW

The opinion of the three-judge district court (J. S. App. 1a–21a) is unreported.

JURISDICTION

The judgment of the three-judge district court enjoining the state from enforcing certain state regulations as inconsistent with federal law was entered on July 6, 1970, and notices of appeal were filed on September 2, 1970. The three-judge court was convened because the complaint also challenged the con-

stitutionality of the state regulations, which are statewide in their application. 28 U.S.C. 2281. The jurisdiction of this Court is invoked under 28 U.S.C. 1253.

QUESTIONS PRESENTED

1. Whether Section 402(a)(8) of the Social Security Act, which requires states to disregard part of an eligible family's earned income in determining need for benefits under the federally-aided program of Aid to Families with Dependent Children (AFDC), is violated by a state plan which denies families AFDC benefits to the extent that their total resources, calculated without deducting the amount which must be disregarded under Section 402(a)(8), would otherwise exceed a state-imposed ceiling.

2. Whether a provision of the New Jersey AFDC plan fails to require that the income of a step-parent be disregarded unless he is required by state law to support his stepchild, or actually contributes to the support of the stepchild.

3. Whether a state may make payments out of state funds to persons providing goods and services to individuals who are also receiving AFDC payments financed in part by federal matching funds.

STATEMENT

This class action was brought by recipients of and applicants for benefits under the federally-financed program of Aid to Families with Dependent Children ("AFDC"; 42 U.S.C. 601 *et seq.*) in the State of New Jersey. It challenges a state regulation governing payments under the plan both on constitutional grounds,

and on the ground of conflict with provisions of the federal statute and regulations with which the state is required to comply in order to qualify for federal funding aid. A three-judge court was convened in view of the constitutional challenge, 28 U.S.C. 2281, but passed on the statutory grounds as this Court has directed. *Rosado* v. *Wyman*, 397 U.S. 397, 402. Neither the court's jurisdiction nor the propriety of injunctive relief in the event the state regulation is not in conformity with the federal provisions is subject to challenge. *Ibid.; California Department of Human Resources Development* v. *Java*, No. 507, this Term, decided April 26, 1971.

1. The principal claim of conflict concerns Section 615 of the New Jersey Categorical Assistance Budget Manual and Section 402(a)(8) of the federal act, 42 U.S.C. (Supp. V) 602(a)(8). Section 402(a)(8) is one of the few restrictions imposed by the federal act upon state determinations of need for welfare benefits. While states are generally free to establish their own standard of need, *Rosado*, *supra*, 397 U.S. at 408–409, and indeed are required to take into consideration any income and resources of a child or its relative claiming AFDC benefits, 42 U.S.C. (Supp. V) 602(a)(7), Section 402(a)(8) forbids the state to consider, in establishing a family's need, its first $30 of earned income in any month, plus one-third of any remaining earned income during the month. The intended effect of this provision, recently before this Court in another context, *Conner* v. *Richardson*, No. 5993, this Term, 400 U.S. 1003, is to encourage welfare recipients

to work and eventually to leave the welfare rolls by reducing benefits only gradually in relation to income earned. While the recipient's benefits are less than they would be if he was not earning income, the total of income and benefits is greater than the recipient could have received from benefits alone.[1]

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[1] For example, a family with needs of $330 per month would receive $330 per month if no income was earned. If it earned an income of $180 per month and experienced no work-related expenses, $30 plus $50 (one-third of $150), or $80, would be disregarded. Thus, only $100 would be subtracted from the $330 need, and a $230 payment would be made. The family would have a total monthly income of $230 plus $180, or $410. If the family earned an income of $480 in a month and was otherwise eligible, see Section 402(a)(8)(D), $30 plus one-third of $450, or $180 would be disregarded and the family would be treated as having earned $300 for the month. It would thus receive benefits of $30—much less than it may earlier have received under the program—for a total monthly income of $510.

The examples given in the Jurisdictional Statement are somewhat inflated by other factors which must be disregarded in calculating need (mandatory payroll deductions and employment expenses), and are subject to the same effects; at the higher ranges of gross income in those examples, only a slight proportion of the total represents welfare payments. Most is accounted for by the income the family earns. Thus, the yearly requirements of $3960 for a family of four (J.S. 7) corresponds to a monthly need of $330. An eligible family earning $705 per month would be entitled under HEW regulations, 45 C.F.R. 233.20(a)(7)(i), to a disregard of $255 ($30 plus one-third of $675), leaving $450. Subtracting $100 for payroll deduction and $50 employment expenses, the total income for purposes of the federal statute is $300. The beneficiary is then entitled to a benefit of only $30, which results in a gross monthly income of $735. The gross annual income represented by this figure, $8820, is apparently large; but only $360 represents welfare benefits. This is less than 10 percent of the amount the state would have been required to pay had the family not been earning income. These savings, plus the obvious incentive to work

New Jersey's regulations for implementing the AFDC program appear to honor this federal restriction. Section 408.3 of its Manual provides for disregard of income in calculating benefits in a manner fully in conformity with Section 402(a)(8). Section 615 of the Manual, however, adds a further test. The benefit calculated under Section 408.3 is to be readded to the family's income without reference to the disregard requirement of Section 402(a)(8), and if the total exceeds a ceiling set at about one and one-third times the average need for a family of that size, the benefit must be reduced to the amount that will produce that figure, or else be eliminated.[2]

Through the application of Section 615, then, families otherwise entitled to a relatively low level of benefits may have those benefits either reduced or

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embodied in the "disregard" provision, are the motivating force behind Section 402(a)(8).

[2] Thus, for the family of four in note 1 *supra*, the ceiling set by the state is $470. Assuming no work expenses for the sake of simplicity, if the family had a monthly income of $480, the calculations under Section 408.3 of the Manual would entitle it to a monthly allowance of $30. That is, $480 less the sum of $30 and one-third of $450 is $300; since the "need" is $330, the family would be entitled to $30. But since $480 is greater than the $470 ceiling, under Section 615 this calculated benefit would be denied. Similarly, a monthly income of $450 would produce a "disregard" of $170 ($30 plus one-third of $420), or a "net" income of $280 and a resulting monthly allowance of $50 (the difference between $280 and $330). But under Section 615 of the New Jersey Manual, the applicant could receive only $20 monthly, the amount which would bring his monthly total to $470. Thus, a $30 portion of the recipient's earnings does not yield greater family income. As the appellants concede, this effect begins "when net earned income meets at least two-thirds of a family's requirements" (J.S. 17).

eliminated, although families receiving considerably higher benefits per month experience no reduction.[3] It is this effect which was challenged and found out of conformity with the federal statute in the district court.

2. The plaintiffs below challenged Section 615 in two other respects which the district court also found out of compliance with governing federal provisions. Section 615 fails to state that in calculating the earned family income to which the Section 408.3 benefit is to be readded for comparison with the Section 615 ceiling, income of a stepfather must not be taken into account unless it is actually available for the use of the dependent children. Whether state regulations impose such a restriction for purposes of calculating Section 408.3 benefits is not directly in issue in this case. The district court held that in order to conform with the federal standards, Section 615 must itself contain such a statement. Section 615 also provides that whether or not benefits are paid direct to recipients, certain payments may be made directly to others who provide them with necessary goods and services. The federal statute generally permits federally assisted payments to be made only to welfare recipients, but of course does not forbid direct vendor payments made wholly from state funds. The district court apparently assumed that the challenged vendor payments were made in part with federal matching funds,

[3] New Jersey employs neither a percentage reduction nor a ceiling on the amount of monthly payments in its general administration of the AFDC program.

and on that basis found the provision for them out of conformity with the federal act.

DISCUSSION

1. The major issue in this case involves the asserted conflict between Section 615 of the New Jersey Manual and Section 402(a)(8) of the federal Act. The Department of Health, Education and Welfare believes that there is such a conflict. Although the New Jersey scheme does to some extent embody the same policies as the disregard provisions of federal law, and is undoubtedly the product of the painful choices which many states are required to make about allocating an insufficient welfare budget, it is not a permissible means of reducing welfare payments. Desirable as it may be to adopt a mode of allocating welfare benefits which first reduces or eliminates payments to those with relatively substantial outside income, the congressional policy embodied in the disregard provision forecloses the choice New Jersey has made.

New Jersey argues that Sections 402(a) (7) and (8) provide standards for use only "in determining need," and that its plan merely imposes a permissible reduction in benefit levels, after need has been determined. The State thus seeks to make the issue one of characterization. As set out in the Statement, New Jersey initially calculates benefit levels for all eligible persons in the state correctly, using the disregard procedures established by Section 402(a)(8). At that point it is faced with a total, statewide demand for

welfare payments which it is unable or chooses not to meet. It is permitted under the federal statute to reduce payment levels to meet these realities. For example, it can provide that only 90 percent of the calculated benefit may be paid (*Rosado* v. *Wyman*, 397 U.S. 397) or that no benefit greater than a fixed maximum may be paid (*Dandridge* v. *Williams*, 397 U.S. 471).[4] Its contention is that Section 615 involves a similar reduction of benefit levels.

The Department believes that the asserted distinction between determining need and reduction of benefit levels is an artificial one. The regulations implementing Sections 402(a) (7) and (8), 45 C.F.R. 233.20, make no such distinction. They cover all aspects of financial eligibility for benefits, including the standards of assistance, the consideration of income and resources, applicable disregards of income and resources, and determination of the amount of payment. The subparagraph requiring the states to provide for the income disregard, 45 C.F.R. 233.20(a) (11) (ii), is equally broad. It applies to all steps in the determination of eligibility and the amount of payment. Whatever limitations may be placed on payment, any consideration of income involved in that limitation must reflect the income disregard.[5] Under the statute and

[4] It is questionable whether Section 402(a) (23), the provision applied by the Court in *Rosado* v. *Wyman*, *supra*, permits a state now to impose a maximum level of payments never previously imposed, particularly if the maximum results in lower AFDC payments than those the state should have been making in accordance with federal requirements in effect on July 1, 1969.

[5] Thus, if a state applied a ratable reduction of benefits, that reduction would be a percentage of the benefits calcu-

regulations, the process of "determining need" includes as a component part the application of any reduction of benefits. Thus, assuming that New Jersey could otherwise impose a maximum in the form of an administrative ceiling based on income, the income must be the amount remaining after application of the Section 402(a)(8) disregard.

If the issue here is to be treated as one of characterization, however, the court below was correct in concluding that Section 615 embodies a recalculation of need in a manner forbidden by Section 402(a)(8). Unlike the established means for reducing payment levels, Section 615 does not operate directly on the amount the state is to pay—as by taking a percentage of the amount, or setting a ceiling on it. It operates by considering a family's *total* resources, and embodies a judgment that it needs no more. While reductions of payment level may have disparate effects, Section 615 entirely eliminates benefits for some persons entitled to them under the federal plan.[6] For the individual so affected, it is hard to characterize what the state has done as a mere "reduction of payment level." Rather, the determination has been made that he, as an individual, needs no welfare payments. See *Dandridge, supra,* 397 U.S. at 481.

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lated after taking the disregard into account. The statutory maximum employed by Maryland in *Dandridge, supra,* is a maximum limitation on payments which, again, are calculated in accordance with Section 402(a)(8).

[6] The result may be to imperil the eligibility of persons intended to be eligible under the federal act, and thus frustrate its policy in another respect. As was explained more fully in connection with *Conner* v. *Richardson, supra,* at certain income

Moreover, if this technique were to be considered a reduction of benefit rather than a recalculation of need, it is hard to see how it is significant that New Jersey has pegged its total income ceiling at 133 percent of need rather than 100 percent or 80 percent. The same technique would be available at these lower percentages. The point is that Congress has determined, for important reasons of public policy, that families earning income should have only a specified part of that income considered in determining their need for benefits. New Jersey asserts the right to consider a greater proportion in those cases in which, in the state's judgment, the income is so high as to prevent the family from being "considered a 'needy' family for purposes of eligibility for a money payment." Manual, Section 615.1. Whether or not that greater proportion is "reasonable" either in the State's view or as a matter of common judgment is not a matter which could be made controlling under the statute; and it is not the proportion which Congress has required as a condition of state participation in the federally-funded plan. New Jersey is inviting this

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levels one is eligible for application of the disregard provision only if "the needs of such persons were met by the furnishing of aid" during one of the previous four months. Section 402(a)(8)(D). Someone may earn enough, through overtime or the like, to reach an income level eligible for benefits under Section 402(a)(8), yet so high that benefits are denied under Section 615. When his income recedes to its former level after four months or more, it is at least problematic whether payments to him could be resumed, even though Section 615 would permit them and Section 402(a)(8) establishes his eligibility, if he must meet and is unable to meet the four-month rule.

Court to make a judgment which Congress has already made and which, in our view, only Congress can reconsider.

It is not denied that budgetary restrictions present the states with many painful choices in the allocation of available welfare funds. There is much apparent justice in a plan such as that of Section 615, which affects those whose income level is highest, and who are therefore best able to endure a reduction or denial of benefits.[7] Indeed, since New Jersey is among the most liberal of the states in calculating its standard of assistance, and the state pays full need, the application of Section 402(a)(8) would retain on assistance, albeit for very small payments, families with levels of gross income which no state had previously thought required assistance under a "need" program such as AFDC. But Section 615 brings about the result of denying benefits entirely to families who are undeniably eligible under the federal provisions, *Dandridge, supra,* and operates with respect to total family resources, or need, rather than the level of state payments as such. While there is room for dispute whether as a policy matter families earning substantial income each month should be eligible for AFDC when the costs of the program as a whole make it difficult for the states to meet the needs even of those without any income, Congress has resolved that dispute by rendering them eligible.

[7] Both ratable reductions and general maximums cast their heaviest burden on the unemployed, who must depend entirely on welfare assistance for their sustenance.

2. It is well-settled that a child cannot be denied AFDC benefits on the basis of the income of a stepparent or other "substitute parent" or "man-in-the-house" unless that person actually contributes to the child's support or, in the case of a stepparent, is legally obligated under state law of general application to support the child. 45 C.F.R. 203.1, recently repromulgated in substantially the same form as 45 C.F.R. 233.90, 36 F.R. 3868, Feb. 27, 1971; see *King* v. *Smith*, 392 U.S. 309; *Lewis* v. *Martin*, 397 U.S. 552. New Jersey states that it adheres to this policy (J.S. 23–25). The district court noted, however, that Section 615 does not express this policy, and held that it must do so. Wherever New Jersey uses the income of a stepfather or paramour without proof of its availability, it violates the federal standards.

Department regulations have long required that a state AFDC plan

> must provide that the determination whether a child has been deprived of parental support or care * * * will be made only in relation to the child's natural or adoptive parent, or in relation to the child's stepparent who is * * * legally obligated to support the child under State law of general applicability * * * to the same extent [as a natural parent] * * * Under this requirement, the inclusion in the family, or the presence in the home, of a 'substitute parent' or 'man-in-the-house' or any individual other than one described in this paragraph is not an acceptable basis for a finding of ineligibility or for assuming the availability of income by the State. In establishing financial eligibility and the amount

> of the assistance payment, only such net income as is actually available for current use on a regular basis will be considered, and the income only of the parent described in the first sentence of this paragraph will be considered available for children in the household in the absence of proof of actual contributions. [45 C.F.R. 233.90, 36 F.R. 3868, February 27, 1971; see also former 45 C.F.R. 203.1.]

The New Jersey plan fails to provide this assurance. Although there are some general provisions to the effect that only available income shall be considered, none of these provisions deals specifically with how a stepfather's income is to be considered. To the contrary, Section 606.2(d) of the Budget Manual states that an applicant is not considered to need AFDC assistance unless the income of all members of the "family budget unit" is less than the total of basic and special circumstance items for such members. The family budget unit is defined to include all substitute parents, whether or not under a legal obligation of support Budget Manual, Section 606.2(c), especially paragraph (3). Thus, the New Jersey Manual provides that the income both of parents and of unrelated males must be considered in determining need, whether or not there has been proof of actual contribution. Similarly, 401.7(b) of the Budget Manual provides that:

> All resources (except those exempted in accordance with section 408) of individuals included within the family budget unit shall be recognized as resources of the family budget unit.

Section 602 of the Budget Manual, setting out instructions for budgeting, provides that:

> In the budget for a family budget unit, the total monthly allowances for both basic and special circumstance requirements of all members of the family budget unit are balanced against the total income of all members of the family budget unit. The budgeting deficit, if any, represents the need of the total family budget unit.

The State schedule for determining budget procedures applicable in the AFDC program makes no distinction between natural or adoptive parents and stepparents. Budget Manual, Section 608.3; see also Section 610.3.

These provisions indicate that New Jersey policy not only permits but requires the income of a non-adopting stepparent to be attributed to a needy and otherwise eligible child even though the State does not have proof that the stepparent makes actual contributions to the child's support. New Jersey's claim that it follows the Federal requirements is inconsistent with its own program manuals. The State's persisting refusal to revise those manuals is in itself an indication that the State is resisting the federal requirements.

As the Statement notes, the issue below was limited to Section 615 of the Manual. Since Section 615 involves a recalculation of need, as we have shown, it is equally subject to the requirement that income of substitute parents must be excluded from the resource calculation unless it is actually contributed or there is a legal obligation of support. It may well be that

the Section itself need not state that requirement, if the Manual states it with sufficient clarity elsewhere; but the Manual does not so state. Accordingly, the district court was correct in its judgment that Section 615 is out of conformity with the federal standards in this respect.[8]

3. We believe the District Court erred in its conclusion that Section 615.5 of the Manual conflicts with Section 406(b) of the federal act, 42 U.S.C. 606(b), in its provision for direct payments to persons who furnish goods and services to welfare recipients—payments which are not "money payments" to the recipients. Section 406(b) provides in effect that federal matching fund payments will be made under the AFDC program only for money payments and a very limited class of direct vendor or protective payments. The district court found, and the state concedes, that Section 615.5 provides for direct vendor payments in a much wider class of circumstances than the federal act.

There is no federal objection, however, to the making of such payments. Section 406 and the supporting regulations provide only that if such payments are made, they must be made entirely with state funds; federal matching funds are to that extent not available. No provision of Section 402 prohibits a state from using vendor payments in its AFDC pro-

[8] The correctness of the district court's conclusion becomes an issue only if it is found to have erred in holding Section 615 inconsistent with the income disregard provisions. The court's holding was that Section 615 must state the substitute parent rule. J.S. App. 18a. If the Section falls on other grounds, the holding regarding stepparents is inconsequential.

gram; it is merely that Section 406 does not provide for reimbursing them. What is at issue is a question of accounting directed to the particular payments made; no question of conformity to federal standards, or possibility that federal funds will be totally denied under Section 404, for failure to conform, is presented when a state makes a vendor payment which is not reimbursible under Section 406.

CONCLUSION

We believe the district court was correct in its primary conclusion regarding Section 615 of the Manual. Its remaining holdings, in part correct and in part in error, are also limited to Section 615 and thus are of no decisional consequence if the primary conclusion is to be affirmed. Nor do we believe that the issue presented is of such significance that, if it were presented on a petition for a writ of certiorari, exercise of this Court's discretionary jurisdiction would be warranted. The case, however, is an appeal as of right, and it may be desirable to correct the erroneous reasoning on the vendor payments issue as well as to affirm the proper result reached below. Because the matter is of some complexity, and the Court's action will necessarily resolve the merits, it may be appropriate for the Court to note probable jurisdiction and give the case plenary consideration. Thus, while we

believe the judgment below is correct, we do not urge summary affirmance.

Respectfully submitted.

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